

UNLAWFUL DISPOSAL OF DRUGS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill, subject to an exception, makes it unlawful to dispose of drugs in certain locations.

Highlighted Provisions:

This bill:

- defines terms;
- makes it an infraction to dispose of a drug in a drain, sewage system, the waters of this state, or a landfill;
- provides a civil penalty for violating the preceding paragraph;
- creates a restricted account to educate citizens on the requirements of this bill and the lawful methods of disposing of drugs; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-115, as last amended by Laws of Utah 2013, Chapter 237

ENACTS:

19-5-125, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-5-115** is amended to read:

19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and rules of political subdivisions.

~~[(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in~~

~~Section 76-2-103.]~~

(1) As used in this section:

(a) "Criminal negligence" means the same as that term is defined in Section 76-2-103.

(b) "Knowingly" means the same as that term is defined in Section 76-2-103.

(c) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(d) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(e) "Wilfully" means the same as that term is defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under [it] this chapter, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding \$25,000 per day who, with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under [it] this chapter.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned

64 treatment works; or

65 (iv) manages sewage sludge in violation of this chapter or rules adopted under [it] this
66 chapter.

67 (4) A person is guilty of a third degree felony and subject to imprisonment under
68 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if
69 that person knowingly:

70 (a) makes a false material statement, representation, or certification in any application,
71 record, report, plan, or other document filed or required to be maintained under this chapter, or
72 by any permit, rule, or order issued under [it] this chapter; or

73 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or
74 method required to be maintained under this chapter.

75 ~~[(5)(a) As used in this section:]~~

76 ~~[(i) "Organization" means a legal entity, other than a government, established or~~
77 ~~organized for any purpose, and includes a corporation, company, association, firm, partnership,~~
78 ~~joint stock company, foundation, institution, trust, society, union, or any other association of~~
79 ~~persons.]~~

80 ~~[(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of~~
81 ~~death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or~~
82 ~~protracted loss or impairment of the function of a bodily member, organ, or mental faculty.]~~

83 ~~[(b)]~~ (5) (a) A person is guilty of a second degree felony and, upon conviction, is
84 subject to imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that
85 person:

86 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

87 (ii) knows at that time that the person is placing another person in imminent danger of
88 death or serious bodily injury.

89 ~~[(c)]~~ (b) If a person is an organization, [it] the person shall, upon conviction of
90 violating Subsection (5)~~[(b)]~~(a), be subject to a fine of not more than \$1,000,000.

91 ~~[(d)]~~ (c) (i) A defendant who is an individual is considered to have acted knowingly if:

92 (A) the defendant's conduct placed another person in imminent danger of death or
93 serious bodily injury; and

94 (B) the defendant was aware of or believed that there was an imminent danger of death

or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

~~(e)~~ (d) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)~~(e)~~(d) and shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections ~~[19-5-115]~~ (3) through (5), a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The director may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and the director and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney, as appropriate under Section 17-18a-202 or 17-18a-203, in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the director, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the director issued under this chapter.

(c) The director may initiate any action under this section and be represented by the

attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the director may initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

(12) (a) A person who violates Subsection 19-5-125(2) is guilty of an infraction.

(b) In addition to a penalty imposed under Subsection (12)(a), the department may impose a civil fine against a person who violates Subsection 19-5-125(2) in an amount that:

(a) reflects the damage caused by the violation; and

(b) does not exceed \$10,000.

Section 2. Section **19-5-125** is enacted to read:

19-5-125. Unlawful disposal of drugs -- Penalties.

(1) As used in this section:

(a) (i) "Drug" means:

(A) a substance recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance, other than food, intended to affect the structure or any function of the body of humans or other animals; or

157 (D) a substance intended for use as a component of any substance described in
158 Subsections (1)(a)(i)(A), (B), or (C).

159 (ii) "Drug" does not include a dietary supplement.

160 (b) "Non-retrievable" means the same as that term is defined in 21 C.F.R. 1300.05.

161 (2) Except as provided in Subsection (3), it is unlawful for a person to dispose of a
162 drug in a drain, sewage system, the waters of this state, or a landfill.

163 (3) A person may dispose of an unused drug in a landfill if, before disposal, the drug is
164 rendered non-retrievable.

165 (4) (a) There is created a restricted account within the General Fund known as the
166 "Drug Free Water Quality Restricted Account."

167 (b) The restricted account shall consist of:

168 (i) money appropriated by the Legislature;

169 (ii) grants from the federal government; and

170 (iii) grants or donations from a person.

171 (c) The department shall use money from the restricted account to educate citizens on
172 the requirements of Subsections (2) and (3) and the lawful methods of disposing of drugs.

173 (5) This section does not apply to the discharge of water from a wastewater treatment
174 plant.